IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.118 of 2000

State: By Public Prosecutor,
High Court, Madras. .. Appellant/Petitioner

vs.

1.Williams
2.Easwaran .. Respondents/Accused

Prayer: This criminal appeal has been filed U/S 378 Cr.P.C. against the judgment dated 26.03.1999,made in S.C.No.7/1996 on the file of the Second Additional Assistant Sessions Judge, Coimbatore.

For Appellant : Mr.R.Muniyapparaj,
Government Advocate (Crl. Side)

For Respondents : Mr.M.Duraisamy, Legal Aid Counsel for R1
Mr.Su.Srinivasan for R2

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.7/1996 on the file of the Second Additional Sessions Judge, Coimbatore. The State is the appellant herein.

2. The case of the prosecution in brief is that on 30.7.1995 at about 22.00 hours on the Combatore-Trichy road in between Sripathy theatre and bus stand the second accused entered into the mini lorry belonging to Milk producers Society and with the connivance of the first accused robed Rs.77,200.20/- from P.W.1 by showing a knife and in the course of committing the offence A1 has caused simple injury on the left little finger of P.W.1-Nagarajan. Hence A1 and A2 were charged under Section 397 IPC. The case was taken on filed by the learned Judicial Magistrate No.3, Coimbatore, who has furnished copies of the documents to the accused under Section 207 of Cr.P.C. and since the offence is triable by a Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, Coimbatore, under Section 209 of Cr.P.C, who in turn has transferred the case to the Second Additional Sessions Judge, Coimbatore.

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3. The charges were framed by the learned trial Judge and when questioned the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.9 were examined and Exs.P.1 to P.8 and M.Os.1 to 6 were marked.

4. P.W.1 is the complainant, who has preferred Ex.P.1-complaint with P.W.9. P.W.1 is the cashier in Co-operative Milk Producers Society at Coimbatore. According to P.W.1, he used to collect the amounts from branch society and brought the same to their office situated at R.S.Puram and kept under lock and key in the bureau. As usual on 30.7.1995, he went to collect the sale proceed from his branch office at about 5.00 pm, he collected Rs.70,000/- from the branch office and placed in the office bag and brought in the office van bearing Registration No.DCC 9398, which was driven by the driver Easwaran, who is A2 in this case. At the time of occurrence P.W.2 was also present in the van along with P.w.1, who is the supplier of milk. He sat in the seat behind the driver's seat in the mini van. When the van was proceeding towards Society suddenly an unknown person entered into the van. He slashed a knife and demanded from P.W.1, P.W.2 & A2 to hand over the money. When P.W.2 made an attempt to resist A1, he received an injury on the left little finger. On seeing this he(P.W.1) became nervous and asked the driver to stop the vehicle. A1 had inflicted injury on the right hand of A2 with a knife. When the vehicle was nearing Sripathi cinema theatre, since it was pitch dark and the place was isolated, A1 snatched the bag from him(P.W.1) and got down from the van, which was moving slowly at that time and ran away. Immediately he(P.W.1) and P.W.2 chased A1 for some distance. The driver was sitting in the van. A1 make good his escape. Immediately he, P.W.2 and Easwaran went to B4 Police Station and preferred Ex.P.1-complaint. According to P.W.1, what he narrated to the Inspector of Police (P.W.9) was reduced to writing by P.W.9. as a complaint. When he came back to the Police Station on 3.8.1995 at about 6.00 pm, the police identified the person who committed the robbery along with the weapon used by A1 for committing the crime. At about 9.00 pm the police have also shown the bag, money, note book and chellan to him(P.W.1). P.W.1 also identified them as the articles robed from him by A1 on the date of occurrence. He has also identified A1 in the Court as the person who had committed the offence of robbery on the date of occurrence and that A2 is the driver who drove the mini van on the date of occurrence. M.O.1 is the knife used at the time of occurrence by A1. M.O.2 is the bag snatched from the hands of P.W.1 by A1 at the time of the occurrence. M.O.3 is the note book kept in the bag at the time of occurrence. M.O.4 is the chellan forms kept in the bag by P.W.1.

5. P.W.2 is an eye witness to the occurrence. According to P.W.2, he went along with P.W.1 on 30.7.1995 after collecting money from the branch office at R.S.Puram, Vellanpatipalayam, Saibaba Colony, Rathinapuri railway station, Ramanathapuram, and returning in

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the van bearing Registration No.DCC 9398 to the branch office at Ramanathapuram along with P.W.1 and the said mini lorry was driven by Easwaran, who is A2 in this Case. After coming to the branch office the collection amount was taken by P.W.1 in the mini lorry which was driven by A2-Easwaran. When the mini lorry was approached near the Society an unknown person entered into the lorry and slashed a knife demanding money. When he resisted the attempt made by A1 he sustained simple injury on the left little finger. At that time the vehicle was nearing Sripathi theatre the person who had shown the knife snatched the bag containing the cash and got down from the mini lorry and ran away from the van. He and P.W.1 chased A1 to some distance but, their attempt ended in futile. Immediately he and P.W.1 returned to the mini lorry and proceeded to the Police Station to prefer a complaint. He has identified the first accused in the Court as the person who had committed robbery on the date of occurrence. He has also identified M.O.1 as the knife used by A1 at the time of committing the offence. The police had sent him to the hospital for treatment. He has also shown the place of occurrence to the police officials. P.W.3 and P.W.4 have failed to support the case of the prosecution and hence they were treated by the learned Public Prosecutor as hostile witnesses.

6. P.W.5, a resident at Door No.9/1 Ramar Kovil, Pachaipalayam, would depose that she is working in the bran shop run by A2 in the name of 'Anitha Bran Shop" and that her monthly salary was Rs.500/- and she joined in the said job as an employee, some three months prior to the date of occurrence. According to P.W.5, she used to receive the keys of the shop from the shop owner and open the shop at about 9.00 am daily and she used to close the shop every day at 7.00 or 7.30 pm. As ussual on 31.7.1995 at about 9.00 am she received the keys from the wife of A2 and opened the shop and cleaned the shop. While cleaning the shop she saw a rexin bag near the rice bag. She left the bag as it is thinking that it was kept there by the shop owner. When she took the bag between 10.30 and 11.00 am she could see cash and papers relating to Milk Society. She immediately went to the shop owner's wife and enquired, whether the owner of the shop came to the shop on the previous day since it was a Sunday. P.W.5 has further stated that the shop owner's wife replied that shop owner did not turn up on the previous day but another person came and received the shop keys from her. P.W.5 waited some time expecting somebody will come and receive the bag but since no one turn up, she closed the shop and locked it and handed over the key to the wife of the owner of the shop and informed her that in "Anitha Bran Shop" a bag containing huge amount of money is kept there and that she does not know who has placed the same. She has identified M.O.2 as the bag kept in the said shop.

7. P.W.6, an officer working in the above said Milk Society, would depose that on 30.7.1995 at about 8.00 pm he was in the office

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expecting the person who have collected the sale proceeds from the branch office will come to the Society and tender the same and since no one has turned up he had sent an employee in his two wheeler in search of them. He came to know at about 9.00 pm that Society vehicle is parked near B4 Police Station and that the amount collected in the branch office was lost. Immediately he informed the fact to Anumatharao, milk distributing authority who also came to the office immediately. Then P.W.6 proceeded along with Anumantharao to the police Station and along with the Inspector of Police, P.W.1, he came to the branch office at Ramanathapuram and signed in the mahazar (Ex.P.2) along with other witness Anumantharao. He has also signed as a witness in Ex.P.3-observation mahazer prepared at the place of occurrence.

8. P.W.7 is the Assistant Manager of the District Milk Production Society. He would depose that on 30.7.1995 at night he received a complaint about the loss of sale proceeds and in connection with that an enquiry was being conducted at B4 Police Station. On 3.8.1995 he and milk distributing officer T.A.Arjun went to B4 Police Station and at that time one Santhagu informed that he is having suspicion on one Williams in connection with the robbery of the sale proceeds and he along with the Inspector of Police, B4 Police Station, along with Santhagu were proceeding near "Mageshwar Foundary" Santhagu identified Williams as the person who is responsible for the loss of the sale proceeds of milk. When Williams was enquired by the Inspector of Police, Williams confessed for having committed the offence of robbery of the sale proceeds of the milk and he has further admitted that if he is taken to his house he will produce the knife used by him at the time of committing the offence. Confession statement of Williams was reduced to writing. The admisible portion of the confession statement of Williams is Ex.P.4. In pursuance of the said confession statement Williams took the Inspector of Police and the witnesses to his house and produced a blood stained knife, a bunch of keys containing three small keys and a big key and handed over the same to the Inspector of Police. Ex.P.5 is the mahazar for the same in which he(P.w.7) and Williams have signed as a witness. He has identified the knife as M.O.1 and the punch of keys as M.O.5(series). He has further identified the first accused as the person who had given the confession statement. The first accused was taken to the Police Station and P.W.1 and P.W.2 identified the accused. At that time A2-Easwaran was in the Police Station. When A2 was enquired in the Police Station he also admitted the offence and gave a confession statement, the admissible portion of the same is Ex.P.6. The Inspector of Police took A2 to "Anitha Bran Shop", which was opened by A2 and he took out rexin bag and handed over the same to the Inspector of Police, which contains huge amount of money, a note book and chellan. Ex.P.7 is the recovery mahazar in which he and another witness Arjun have signed. The bag contained Rs.77,780.20/-. M.O.6 is the said cash. M.O.2 is the

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rexin bag. M.O.3 is the chita note book. M.O.4 (series) are the chellans. He has identified A2 in the Court.

9. P.W.8 is the doctor who had examined A2 for the simple injury he had sustained in the occurrence on 30.7.1995 at about 8.15 am. The doctor has examined A2 on 30.7.1995 at about 10.50 pm and issued Ex.P.9-wound certificate relating to A2 for the injury measuring 1 x ½ cm on the left little finger. At the time of his examination A2 was said to be conscious. He has also found a lacerated injury on the left forearm measuring 3 x ¼ cm. The doctor has opined that the above said injury would have been caused with a weapon like M.O.1.

8. P.W.9, is Inspector of Police, who had investigated the case. P.W.9 would depose that on 30.7.1995 at about 22.00 hours P.W.1 along with A2 and P.W.2 appeared in the police station and P.W.1 gave written complaint which was registered under B4 Police Station Cr.No.1597/95 under Section 394 IPC. Ex.P.10 is the FIR. He has examined the witnesses and went to the place of occurrence and prepared mahazar in the presence of witnesses and also arrested the accused recorded their confession and on the basis of the confession recovered the material objects in the presence of witnesses and sent the injured P.W.1 and A2 to the doctor and obtained wound certificate and also examined the witnesses and recorded their statements and after completing the investigation filed the charge sheet under Section 397 IPC against the accused.

9. On the above pleadings incriminating circumstances were put to the accused to which the accused denied their complicity with the crime. The accused have exhibited Ex.D.1, news published in a new paper. The accused have not let in any oral evidence.

10. After going through the documentary and oral evidence, the learned trial Judge has come to a conclusion that the charge levelled against the accused has not been proved beyond any reasonable doubt and accordingly benefit of doubt has to be given to the accused and acquitted both A1 and A2. Against the findings of the learned Trial Judge, the State has preferred this appeal.

11. Now the point for determination in this appeal is whether the judgment of the trial Court in S.C.No.7/1996 on the file of the Second Additional Assistant Sessions Judge, Coimbatore, is perverse to warrant interference by this Court?

12. The Point:-

12(a) Inspite of service of summons the accused did not turn up. Hence Mr.N.Duraisamy, the learned Counsel, was appointed as Legal Aid Counsel to defend the accused.

12(b) Heard Mr.R.Muniyapparaj, learned Public Prosecutor

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for the appellant and Mr.N.Duraisamy, Legal Aid Counsel for the accused and considered their rival submissions. I am of the considered view that the appeal preferred by the State cannot be sustained for the following reasons:-

i) Admittedly the distance between the place of occurrence of B4 Police Station is only 2 kms and that P.W.1, P.W.2 and A2 went to the Police Station in a mini van bearing registration No.DCC 9398. According to P.W.1 the occurrence had taken place at 10.00 pm and as per the evidence of P.W.9 the FIR (Ex.P.10) was registered on the same day at 10.00 pm. This is impossible because even as per the evidence of P.W.1 the time of the occurrence was not spoken to by him and also by P.W.2, an occurrence witness. But in the charge sheet alone it has been stated that the occurrence has occurred at 22.00 hours on 30.7.1995. As per the evidence of P.W.1 and P.W.2 after the occurrence they chased A1 to some distance. So the time of occurrence as stated in the charge sheet and the time of preferring the complaint as spoken to by P.W.9 cannot be one and the same time i.e. 30.7.1995 at 22.00 hours.

ii) According to P.W.1, he went to B4 Police Station after the occurrence and he narrated the incident to the Inspector of Police who reduced the same into writing, whereas the Inspector of Police(P.W.9) in his evidence has deposed that P.W.1 gave a written complaint on the basis of which Ex.P.10-FIR was registered.

Iii) On the basis of confession statement of A1, M.O.2-rexin bag, M.O.3-note book, M.O.4-Chellan were recovered from "Anith Bran Shop", belonging to A2. But the bunch of keys(M.O.5) for the shop has been recovered from the first accused. P.W.9 in his evidence in the cross-examination has stated that the shop was opened after the seizure of M.O.5-bunch of keys from A1. P.W.7 is the recovery mahazar witness. He would depose that one Santhagu identified A1 but the said Santhagu was not examined as a prosecution witness to prove the identification and arrest of the accused to corroborate the evidence of P.W.7. P.w.7 speaks about M.O.5-bunch of keys recovered, but he has not deposed to the fact that only with the bunch of keys recovered from A1, the Bran Shop belonging to A2 was opened and M.Os.2 to 4 were recovered.

iv) According to P.W.5, a maid employee under A2 in 'Anitha Bran Shop", On 31.7.1005 at about 9.00 am she opened the shop and while she was cleaning the shop, she saw M.O.2-rexin bag and immediately she went and informed the wife of A2 and enquired about the rexin bag which is present in the shop containing cash and some papers relating to the milk Society. She has categorically deposed that wife of A2 informed her that on the previous night a person came and received the keys but A2's wife was not examined as a prosecution witness to identify that on 30.1.1995 A1 came and received the key of 'Anitha Bran Shop" from her. So the link to connect A1 to the effect that he only placed the rexin bag in the Anith Bran Shop belonging to A2 and left, is missing in this case which is fatal to the case of

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the prosecution.

v) It is the case of P.W.1 that he had kept Rs.70,000/- in the rexin bag which was robbed by A1 at the time of occurrence. But as per the evidence of P.W.7, recovery witness, a sum of Rs.77,780.20/- were recovered from M.O.2-rexin bag. There is no explanation forthcoming from the prosecution as to how Rs.70,000/- said to have been kept in M.O.2-rexin bag became Rs.77,780.20/-. Further the evidence of P.w.7 cannot also be relied on because it is seen from Ex.D.1 that he has involved in a scandal to the tune of Rs.23,00,000/- in the Milk Society, Coimbatore.

12(c) The learned trial Judge has discussed the above infirmities in the prosecution case and has come to the right conclusion that the accused are entitled to the benefit of doubt and consequently acquitted the accused from all the charges levelled against them. Under such circumstances, I do not find any perverseness in the findings of the learned trial Judge in S.C.No.7/1996 on the file of the Second Additional Sessions Judge, Coimbatore, to warrant interference from this Court. Point is answered accordingly.

13. In the result, the appeal is dismissed confirming the Judgment in S.C.No.7/1996 on the file of the Second Additional Sessions Judge, Coimbatore. This Court records the appreciation of the services rendered by the learned counsel Mr.N.Duraiswamy, who has been appointed as the Legal Aid Counsel for the accused in this case. His fee is fixed as Rs.2,500/-(Rupees Two Thousand and Five Hundred) only to be paid by the State Legal Service Authority.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. THE II ADDL. SESSIONS JUDGE,
COIMBATORE.

2. -do- Thro' THE PRL. SESSIONS JUDGE,
COIMBATORE.

3. THE JUDICIAL MAGISTRATE III,
COIMBATORE.

4. THE CHIEF JUDICIAL MAGISTRATE,
COIMBATORE.

5. THE DISTRICT COLLECTOR,
COIMBATORE.

6. THE DIRECTOR GENERAL OF
POLICE, MADRAS.

7. THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

8. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

9. THE LEGAL AID CENTRE
(MR.N.DURAISAMY LEGAL AID COUNSEL)
HIGH COURT, CAMPUS, MADRAS.

+1cc to M/s. SV.Srinivasan, Advocate Sr 4760
+1cc to Mr.N.Doraisamy, Advocate Sr 4416

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